



**John T. Scott, III**  
Vice President &  
Deputy General Counsel  
Regulatory Law

**Verizon Wireless**  
1300 I Street, N.W.  
Suite 400 West  
Washington, D.C. 20005

Phone 202 589-3785  
Fax 202 589-3750

May 27, 2004

**Ex Parte**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 - 12<sup>th</sup> Street, SW, Room TW-A325  
Washington, DC 20554

Re: Improving Public Safety Communications  
in the 800 MHz Band, WT Docket No. 02-55

Dear Ms. Dortch:

Verizon Wireless has consistently noted the windfall to Nextel associated with the “Consensus” Plan backed by Nextel.<sup>1</sup> Nextel has disputed these concerns in filings with the Commission, arguing that the “Consensus” Plan is a “value for value” spectrum exchange.<sup>2</sup> However, on May 24, 2004, at a Lehman Brothers conference, Tim Donahue, President and CEO of Nextel, and Barry West, Chief Technical Officer of Nextel, addressed how Nextel plans to use the replacement spectrum it receives in the rebanding of the 800 MHz band.<sup>3</sup> Of note, Mr. West stated with respect to replacement spectrum: “We’re not looking at this for our voice services, we’re looking at it for the next generation of technology – for broadband.”

Clearly, this statement contradicts the “value for value” arguments that Nextel has previously made and thus further undermines any basis for granting Nextel spectrum at 1.9 GHz.

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<sup>1</sup> See, e.g., Letter from John T. Scott, Verizon Wireless, to Marlene Dortch, WT Dkt. No. 02-55, filed April 8, 2004.

<sup>2</sup> See e.g., Ex Parte Presentation of Nextel Communications, Inc., WT Dkt. No. 02-55, filed March 5, 2004.

<sup>3</sup> See “Nextel sees spectrum alternative unworkable” at [http://biz.yahoo.com/rc/040524/telecoms\\_nextel\\_spectrum\\_1.html](http://biz.yahoo.com/rc/040524/telecoms_nextel_spectrum_1.html)

Nextel's interleaved spectrum at 800 MHz cannot now or in the future be used for next generation or broadband technology. Its "replacement" spectrum, however, can be deployed easily and readily for such services, as noted by Nextel's own CTO. This statement also eviscerates Nextel's previous arguments that its continued use of iDEN technology lessens the value of contiguous spectrum for its services.<sup>4</sup> If Nextel plans to deploy next generation, broadband technology, it will require extensive contiguous spectrum to accomplish this goal because iDEN is incapable of providing such services.<sup>5</sup>

As Verizon Wireless documented, Nextel previously established that non-contiguous SMR spectrum is worth less than contiguous spectrum held by other CMRS providers. When the Commission was considering establishing a CMRS spectrum cap in 1994, Nextel conceded that "the non-contiguous spectrum [then] available to SMR is not equivalent to the contiguous, exclusive use spectrum available to cellular," and argued that the Commission should not adopt a spectrum cap "that treats all CMRS spectrum as fungible when it simply is not."<sup>6</sup> The Commission found "merit" in these arguments and accorded SMR spectrum special treatment that did not fully count that non-contiguous spectrum Nextel held for purposes of the CMRS spectrum cap.<sup>7</sup> The Commission also has several times acknowledged that contiguous SMR spectrum holdings are more valuable than non-contiguous ones.<sup>8</sup> To ignore the significant appreciation of value in the spectrum Nextel is exchanging, in the face of prior statements by Nextel and findings by the Commission, would itself constitute arbitrary and capricious agency action.

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<sup>4</sup> See Ex Parte Presentation of Nextel Communications, Inc., WT Dkt. No 02-55; filed Mar. 18, 2004 (including report by Dr. Gregory Rosston entitled "Economic Analysis of the Kane Reece Spectrum Valuation") ("Rosston Analysis").

<sup>5</sup> Nextel has stated in its 2002 and 2003 10K filings with the SEC that it needs contiguous spectrum to offer broadband services.

<sup>6</sup> See Comments of Nextel Communications, Inc., GN Docket No. 93-252, at 34, 35, filed June 20, 1994.

<sup>7</sup> See *In the Matter of Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, Third Report and Order*, 9 FCC Rcd 7988, ¶ 275 (1994).

<sup>8</sup> See *Development of SMR Systems in the 800 MHz Band, Memorandum Opinion and Order on Reconsideration*, 14 FCC Rcd 17556 (1999), at ¶ 12 ("[B]locks of contiguous spectrum allow for more flexibility in terms of technological applications and innovation. Single channel licensing would not foster the kind of technological advancements that would allow SMR licensees, which typically operate multichannel systems, to compete with other CMRS licensees.") (footnote omitted); *id.* n.32 (citing Nextel support for the licensing of contiguous spectrum); *Development of SMR Systems in the 800 MHz Band, Third Report and Order*, 9 FCC Rcd 7988, ¶ 103 (1994) ("[A]ssigning contiguous spectrum, where feasible, is likely to enhance the competitive potential of wide-area SMR providers."); *Development of SMR Systems in the 800 MHz Band, Further Notice of Proposed Rulemaking*, 10 FCC Rcd 7970 (1994), at ¶ 77 ("[B]ecause of the non-contiguous nature of the channels, there does not appear to be a high degree of interdependency among them; and, the limited geographic scope of the licenses is likely to make them less valuable than the licenses for the MTA blocks.").

In addition, Nextel's confirmation that it intends to use nationwide and contiguous spectrum it receives to introduce wireless broadband service also would render arbitrary and capricious any Commission conclusion that the Nextel plan involves a true "value for value" exchange. Throughout this proceeding, Nextel has argued that contiguous spectrum is no more valuable to it than interleaved spectrum, since its iDEN technology is capable of operating efficiently in narrow channels. We have noted that spectrum's value must be based on its potential, not actual, use. In any event, it would be arbitrary and capricious for the Commission to accept Nextel's artificially low valuation of the spectrum, because the record now contains evidence that Nextel intends to use the spectrum to offer wireless broadband and thus contradicts Nextel's *own* defense of its low valuation.

Aside from dispelling the notion that 1.9 GHz involves a value for value transaction, Nextel's statements and the resulting reactions of analysts highlight the windfall nature of that outcome. Specifically, Nextel predicted to analysts that the company would be receiving 1.9 GHz spectrum from the FCC. Yesterday, Moody's placed the ratings of Nextel on review for possible upgrade. Other analysts have confirmed that a grant of 1.9 GHz spectrum would result in significant appreciation of Nextel's spectrum holdings and be a "transforming event" for Nextel.<sup>9</sup>

Finally, Nextel's admission validates Kane Reece's appraisal methodology, which demonstrates that Nextel would net a huge windfall from exchanging non-contiguous 800 MHz spectrum for contiguous spectrum at 800 MHz and 1.9 GHz. It also undermines Nextel's spectrum valuations, which assumed no difference between contiguous and non-contiguous spectrum.<sup>10</sup>

In conclusion, the CTO of Nextel confirms what Verizon Wireless has consistently argued – the Consensus Plan confers a spectrum windfall to Nextel, permitting it to receive, in a private and exclusive sale and in violation of the Communications Act, spectrum that it will use for the deployment of "the next generation of technology – for broadband."

Very truly yours,

/s/  
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John T. Scott, III

#### Attachments

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<sup>9</sup> Bear Stearns, *Spectrum Swap Reported in Nextel's Favor*, March. 9, 2004, at 3: Nextel "could use the spectrum for a high-speed broadband strategy, which it is testing today in Virginia using leased 1900 MHz spectrum. We would view the approval of the spectrum swap as a transforming event for Nextel." *See Ex Parte* Letter from John T. Scott to Marlene H. Dortch, April 8, 2004, including in the record other analysts' conclusions that a grant of 1.9 GHz would grant a significant competitive advantage to Nextel.

<sup>10</sup> Rosston Analysis at pp. 4-9.

cc:   Bryan Tramont  
      Sheryl Wilkerson  
      Jennifer Manner  
      Barry Ohlson  
      Sam Feder  
      John Muleta  
      Edmond Thomas  
      Jane Mago  
      Cathy Seidel  
      David Furth  
      D'wana Terry

      Walt Strack  
      Aaron Goldberger  
      Michael Wilhelm  
      Sara Mechanic  
      Julius Knapp  
      Jim Schlichting  
      Bruce Franca  
      Alan Scrim  
      Lauren Van Wazer  
      Evan Kwerel  
      Ken Carter